



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR MNR FF CNR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidence.

The landlord provided undisputed testimony that the tenant was personally served with the 10 Day Notice, with an effective date of September 11, 2017, on September 2, 2017. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on September 2, 2017.

### **Issue(s) to be Decided**

Should the landlord’s 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

This month-to-month tenancy began on August 1, 2014, with monthly rent currently set at \$1,161.00, payable on the first of the month. The landlord collected a security deposit of \$547.50, and still holds that deposit. The tenant indicated that she was in the process of moving out, but has yet to move out all her belongings. The landlord indicated in the hearing that she was unaware that the tenant was moving out, and was still seeking an Order of Possession.

The landlord provided undisputed testimony in the hearing that the tenant owed rent in the amount of \$1,161.00 for the months of September, October, and November 2017 for a total of \$3,483.00 in outstanding rent. The tenant testified that she was unable to make this payment in full, and required more time to pay. The landlord indicated that she wished to have the security deposit dealt with at the end of the tenancy in accordance with the *Act* and tenancy agreement.

### **Analysis**

**Section 26** of the *Act*, in part, states as follows:

#### **Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The tenant did not dispute the fact that she had failed to pay the full rent due within five days of being deemed to have received the 10 Day Notice. The tenant made an application pursuant to section 46(4) of the *Act*, within five days of receiving the 10 Day Notice, to cancel the 10 Day Notice.

I find that the tenant had failed to pay the outstanding rent as required by the *Act*, and I am dismissing the tenant's application to cancel the 10 Day Notice. I find that the 10 Day Notice issued by the landlord is valid, and complies with section 52 of the *Act*.

I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The tenant did not dispute the fact that she failed to pay the full month's rent for September 2017 through to November 2017. I, therefore, grant the landlords' application for \$3,483.00 in unpaid rent. The landlord made an application for recovery of the filing fee for this application. As the landlord was successful in their application I am allowing the landlord to recover \$100.00 for the cost of this application.

### **Conclusion**

I dismiss the tenant's application to cancel the landlord's 10 Day Notice. I find that the landlord's 1 Month Notice is valid and effective as of the corrected effective date of September 12, 2017. I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant.

Should the tenant and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

I issue a \$3,583.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, and also allows the landlord to recover the filing fee for this application. The security deposit will be dealt with at the end of the tenancy in accordance with the *Act* and tenancy agreement as requested by the landlord.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 1, 2017

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Residential Tenancy Branch